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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,969	11/09/2001	Edwin Evans	PHDL0640-001	3784
26948	7590	09/16/2004	EXAMINER	
ELLIS & VENABLE, PC 101 NORTH FIRST AVE. SUITE 1875 PHOENIX, AZ 85003			ENGLE, PATRICIA LYNN	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 09/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/035,969

Applicant(s)

EVANS, EDWIN

Examiner

Patricia L Engle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15 and 16 is/are rejected.
- 7) ☒ Claim(s) 13, 14, 17 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. In response to applicant's telephone inquiry of September 9, 2004 regarding the last Office action, the following corrective action is taken.

The period for reply of 3 MONTHS set in said Office Action is restarted to begin with the mailing date of this letter.

2. A complete copy of the last Office Action is enclosed.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the bottom side of the insertable screen being pinched between the spare tire gate and the back gate (claims 13,14,17 and 18) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-3, 6, 7, 11, 12, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond (US Patent 5,678,882) in view of a JEEP® Wrangler®.

Regarding claim 1, Hammond discloses a window system for use on a passenger compartment of a motor vehicle, the window system comprising: a flexible window (74) having a first window side, a second window side and a window perimeter area; a soft cover window frame (72) having an outside frame side and an inside frame side; and an insertable screen (76) having a first screen side and a second screen side and a bottom side; wherein the window perimeter area on the second window side (of 74) matingly couples with the first screen side (of 76), and the second screen side matingly couples with the inside window frame (see Fig. 10 and 26A).

Hammond does not disclose that the vehicle includes a convertible soft-covering system.

A JEEP® Wrangler® is an example of a vehicle similar to the vehicle shown in Hammond with a convertible top and a door which would allow the flexible window of Hammond to be used.

It would have been obvious to one ordinary skill in the art at the time of the invention to use the window system of Hammond in a Jeep® Wrangler®. The motivation would have been to “provide superior ventilation within the vehicle while excluding inclement weather and flying insects” (Hammond- column 3, lines 28-32).

Regarding claim 2, Hammond discloses that the screen (76), the window frame and the flexible window can be joined together by “the mating of a fuzzy fabric with a hook fabric” (column 13, lines 47-49).

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Regarding claims 3, 7 and 16, Hammond does not disclose the details of the material used for the screen. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a woven vinyl coated material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious mechanical expedient.

Regarding claims 6 and 15, Hammond discloses in Figure 26A that there are at least 3 window layers. It would have been obvious to one of ordinary skill in the art to use multiple screens. The motivation would have been to provide a tighter mesh to block the rain and insects better.

Regarding claims 11 and 12, it would have been obvious to one of ordinary skill in the art to rotate the second screen. The motivation would have been to block more insects, air and sunlight.

6. Claims 4, 5, 8, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond in view of the Applicant's Admissions.

Hammond disclose the window system of claims 1 and 6.

Hammond does not disclose that the screen blocks 55-95% of the sunlight.

The Applicant admits that Phifer sells a product called SUNTEX® which blocks over 75% of the sun's rays.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to use a screen that blocked the sun's rays as it would merely involve the alternate utilization of an equivalent screen material to achieve the same exact function.

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Therefore, it would have been obvious to combine the Applicant's admissions with Gunn to obtain the invention as specified in claim 4, 5, 8, 9 and 10.

***Double Patenting***

7. Applicant is advised that should claim 9 be found allowable, claim 10 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

8. Claims 17 and 18 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 13 and 14. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Allowable Subject Matter***

9. Claims 13 and 14 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter: The primary reason for the indication of allowable subject matter is that the prior art of record does not disclose or suggest a window system in which the bottom side of the screen is pinched

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between the spare tire gate and the back gate of a vehicle, in combination with the other elements recited.

### *Response to Arguments*

11. Applicant's arguments filed September 26, 2003 have been fully considered but they are not persuasive.

Regarding claim 1, The Applicant argues that Gunn does not disclose a window for a passenger compartment of a vehicle with convertible soft top covering system like the applicant's invention. The claim language that Applicant uses is only functional language and the passenger compartment is not brought into the body of the claim. However, the Examiner has changed the reference used to reject claim 1 to the Hammond reference which discloses that the same window for the camper can be used on the passenger compartment window

Regarding claim 2, the Applicant argues that Bell and Gunn are non-analogous art. However, on page 10, lines 3-4 of the amendment that Applicant states that one source of motivation to combine prior art references is the nature of the problem to be solved. In both Gunn and Bell, there are flexible panels with windows which are attached to the flexible panel. Gunn discloses that the panel is "sewn or otherwise suitable attached" (column 2, lines 62-63). Bell teaches that a window is "secured over the opening by snaps, zippers, Velcro or other suitable securing means" (column 8, lines 10-12). Sewing and using snaps, zippers or Velcro would be equivalent attachment means. Therefore it would have been obvious to one of ordinary skill in the art to choose any attachment means, including the use of a Velcro™ fastener or sewing. Regarding the argument that using a Velcro type fastener in Gunn would destroy the

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intended function of Gunn, the Examiner disagrees with the Applicant. Gunn discloses that other attachment means could be used. Velcro™ fasteners provide attachment means that would prevent insects from entering the truck bed. Further using a detachable fastening means would allow the screen to be easily changed if a hole were to be formed in the screen, to allow the screen to continue to perform its intended function. However, this is mute as the Hammond reference specifically states that hook and loop fasteners can be used to connect the different window panels.

Regarding claims 6, 11, 12 and 15, the applicant argues that the duplication of the screens would not be obvious because the only intention of Gunn is to block insects. However, using multiple screens with a tighter mesh would prevent smaller bugs, such as gnats, from entering the truck bed. As a bi-product of blocking more bugs, sunlight and wind would also be blocked. The same argument applies to the Hammond reference.

Regarding claims 3-5, 7-10 and 16, the Applicant argues that it would not have been obvious to use the claimed material because it is used in the housing industry not the automotive industry. Gunn discloses a convertible soft-cover for a camper. A camper is a mobile home. Therefore it would have been obvious to use material used in the housing industry for a mobile home or mobile tent because they provide housing. Hammond teaches that the same window system that is used for the camper section can be used for the passenger compartment.



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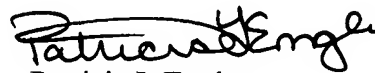
*Conclusion*

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L Engle whose telephone number is (703) 306-5777.

The examiner can normally be reached on Monday - Friday from 8:00 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Glenn Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Patricia L Engle  
Examiner  
Art Unit 3612

ple  
April 1, 2004